

## HOUSE BILL No. 2611

By Committee on Federal and State Affairs

2-7

1 AN ACT concerning alcoholic beverages; authorizing the delivery of  
2 alcoholic liquor and cereal malt beverage by licensed retailers and  
3 third-party delivery services to patrons; amending K.S.A. 41-102, 41-  
4 2701 and 41-2728 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) A delivery permit shall allow the permit holder to  
8 deliver alcoholic liquor or cereal malt beverage on behalf of a retailer or a  
9 cereal malt beverage retailer, as defined in K.S.A. 41-2701, and  
10 amendments thereto, in accordance with the provisions of sections 2 and 3,  
11 and amendments thereto. Such deliveries may be conducted by the permit  
12 holder, an employee of the permit holder or an independent contractor who  
13 contracts with the permit holder to conduct such deliveries.

14 (b) An application for a delivery permit shall be submitted in such  
15 form and manner as prescribed by the director and shall include payment  
16 of the delivery permit fee in the amount of \$25. Each application shall  
17 contain an affirmation by the applicant that the applicant is registered to do  
18 business in this state and that all of the following is true for each  
19 individual conducting deliveries on behalf of the applicant:

20 (1) The individual is at least 21 years of age and holds a valid driver's  
21 license;

22 (2) the individual will maintain or otherwise be covered by primary  
23 automobile insurance that meets the minimum coverage requirements in  
24 K.S.A. 40-284 and 40-3107, and amendments thereto; and

25 (3) the individual will comply with the provisions of sections 2 and 3,  
26 and amendments thereto, in conducting deliveries of alcoholic liquor and  
27 cereal malt beverage.

28 (c) A delivery permit shall commence on the date specified on the  
29 permit and expire two years after such date.

30 (d) Each delivery permit holder shall be liable for violations of the  
31 provisions of the Kansas liquor control act and the Kansas cereal malt  
32 beverage act governing the sale and consumption of alcoholic liquor and  
33 cereal malt beverage that are committed by any individual conducting  
34 deliveries on behalf of such delivery permit holder.

35 (e) The secretary shall adopt rules and regulations necessary to  
36 implement the provisions of this section.

1 (f) The provisions of this section shall be a part of and supplemental  
2 to the Kansas liquor control act.

3 New Sec. 2. (a) In addition to the rights of a retailer under the Kansas  
4 liquor control act, a retailer license shall allow the retailer to deliver  
5 alcoholic liquor and cereal malt beverage in the original unopened  
6 container that is sold by such retailer to a patron at an address designated  
7 by such patron for consumption off the licensed premises and not for  
8 resale.

9 (b) Prior to any alcoholic liquor or cereal malt beverage being  
10 removed from a retailer's licensed premises for delivery under this section,  
11 such retailer shall finalize all payments for such alcoholic liquor or cereal  
12 malt beverage made by the purchasing patron or obtain a debit or credit  
13 card authorization for the total amount charged for such alcoholic liquor or  
14 cereal malt beverage. All alcoholic liquor and cereal malt beverage shall  
15 be assembled, packaged and fulfilled for delivery at such retailer's licensed  
16 premises and from the retailer's inventory located at such premises.

17 (c) (1) A retailer may authorize deliveries on such retailer's behalf  
18 through a contractual agreement with an independent contractor or third-  
19 party delivery service. A third-party delivery service shall hold a valid  
20 delivery permit prior to entering into any such contractual agreement with  
21 a retailer.

22 (2) An independent contractor or third-party delivery service may  
23 offer to conduct deliveries on behalf of a retailer pursuant to this section if:

24 (A) The retailer expressly agrees in writing to allow the independent  
25 contractor or third-party delivery service to offer the delivery of orders on  
26 behalf of such retailer; and

27 (B) such agreement does not include any provision that requires a  
28 retailer to indemnify the independent contractor or third-party delivery  
29 service for any damages or harm caused by the independent contractor or  
30 third-party delivery service.

31 (3) Any provision in an agreement between an independent contractor  
32 or third-party delivery service and a retailer that is contrary to this  
33 subsection is void and unenforceable.

34 (4) No employee of a retailer or third-party delivery service and no  
35 independent contractor contracting with a retailer or third-party delivery  
36 service shall be required to obtain a delivery permit in order to conduct  
37 deliveries for such retailer or third-party delivery service.

38 (d) (1) A retailer may authorize a third-party delivery service to  
39 conduct other delivery-related services. A third-party delivery service that  
40 has contracted with a retailer for such services may use electronic means,  
41 including, but not limited to, websites and mobile device applications, to  
42 market, receive and process orders placed by patrons for alcoholic liquor  
43 and cereal malt beverage if:

1 (A) The retailer retains sole discretion to determine whether to accept  
2 an order and to complete a sale transaction;

3 (B) the sale transaction is between the patron placing the order and  
4 the retailer that accepts such order, and the retailer appears as the merchant  
5 of record at all times, including at the time of purchase and acceptance of  
6 the delivery; and

7 (C) the retailer receives full payment from the patron placing the  
8 order for all alcoholic liquor and cereal malt beverage included in such  
9 order, and all moneys collected from such patron are automatically paid or  
10 otherwise credited to such retailer.

11 (2) A third-party delivery service conducting deliveries or other  
12 delivery-related services on behalf of a retailer shall not:

13 (A) Use a retailer's likeness to falsely suggest sponsorship or  
14 endorsement of such third-party delivery service by such retailer;

15 (B) inflate or alter a retailer's pricing, but may assess other charges to  
16 the patron if such charges are separately itemized on the receipt provided  
17 to the patron; or

18 (C) charge the retailer any fee, commission or other expense unless  
19 such fee, commission or other expense is clearly identified in a written  
20 agreement executed by both parties.

21 (3) A third-party delivery service shall remove a retailer from such  
22 third-party delivery service's delivery and delivery-related services within  
23 10 days after receiving a request for such removal from such retailer.

24 (e) (1) All alcoholic liquor and cereal malt beverage that is removed  
25 from a retailer's licensed premises for delivery pursuant to this section  
26 shall remain in the possession of such retailer or the third-party delivery  
27 service conducting the delivery on behalf of such retailer, the employee of  
28 such retailer or third-party delivery service or an independent contractor  
29 contracting with such retailer or third-party delivery service to conduct  
30 such deliveries. Such alcoholic liquor and cereal malt beverage shall not  
31 be transferred to any other person until delivered to the address designated  
32 by the patron, or if delivery cannot be completed, returned to the licensed  
33 premises of the retailer.

34 (2) Alcoholic liquor and cereal malt beverage shall only be delivered  
35 by an individual who:

36 (A) Is at least 21 years of age;

37 (B) holds a valid driver's license;

38 (C) is covered as the driver of a vehicle by primary automobile  
39 insurance that meets the minimum coverage requirements in K.S.A. 40-  
40 284 and 40-3107, and amendments thereto; and

41 (D) completes a training and certification program for individuals  
42 delivering alcoholic liquor and cereal malt beverage pursuant to this  
43 section that is reviewed and approved by the director and includes, but is

1 not limited to, identifying individuals who are less than 21 years of age or  
2 intoxicated and recognizing false or altered forms of identification.

3 (f) (1) All alcoholic liquor and cereal malt beverage delivered  
4 pursuant to this section shall only be delivered to an individual who is at  
5 least 21 years of age and who presents valid government-issued  
6 photographic identification authenticating the age of such individual. The  
7 identity and age of the individual accepting delivery of any alcoholic  
8 liquor or cereal malt beverage shall be authenticated, and such individual  
9 shall execute a written or electronic acknowledgment of receipt of such  
10 alcoholic liquor or cereal malt beverage and certification of such  
11 individual's age. A delivery shall be deemed completed upon proper  
12 acceptance of the alcoholic liquor or cereal malt beverage. All completed  
13 deliveries shall be final.

14 (2) No delivery of alcoholic liquor or cereal malt beverage shall be  
15 completed if:

16 (A) There is no individual physically present at the address  
17 designated by the patron placing the order who is available to accept  
18 delivery;

19 (B) the individual attempting to accept delivery is:

20 (i) Less than 21 years of age;

21 (ii) unable to provide valid government-issued photographic  
22 identification; or

23 (iii) noticeably intoxicated; or

24 (C) the address designated by the patron placing the order is:

25 (i) Part of any locker, mailbox, package shipping location or similar  
26 service or storage facility business;

27 (ii) any place of worship;

28 (iii) any daycare;

29 (iv) any elementary or secondary school;

30 (v) any public or private postsecondary educational institution; or

31 (vi) any place of business that is licensed under the Kansas liquor  
32 control act to manufacture, distribute or sell alcoholic liquor, except that  
33 such deliveries may be made to a guest of a hotel or other place of public  
34 accommodation for personal consumption and not for resale.

35 (3) Deliveries of alcoholic liquor or cereal malt beverage shall only  
36 be made:

37 (A) On the same calendar day that such alcoholic liquor or cereal  
38 malt beverage is removed from the retailer's license premises for delivery;

39 (B) during those times when it is lawful for the retailer to sell  
40 alcoholic liquor or cereal malt beverage for consumption off the licensed  
41 premises; and

42 (C) to an address that is located within a 50-mile radius from the  
43 licensed premises of the retailer that sold such alcoholic liquor or cereal

1 malt beverage.

2 (g) Each retailer delivering alcoholic liquor or cereal malt beverage  
3 pursuant to this section and each third-party delivery service shall submit  
4 to the director an outline of a training and certification program for  
5 individuals delivering alcoholic liquor and cereal malt beverage pursuant  
6 to this section that includes, but is not limited to, identifying individuals  
7 who are less than 21 years of age or intoxicated and recognizing false or  
8 altered forms of identification. The director shall review and approve or  
9 deny all submitted program outlines. The director shall provide the  
10 specific reason for the denial of any program outline along with notice to  
11 the retailer or third-party delivery service that such program outline is  
12 denied.

13 (h) In addition to the powers and duties of the director provided in  
14 K.S.A. 41-201, and amendments thereto, the director and any employees  
15 or agents thereof shall have the authority to conduct an audit of any  
16 retailer's records to determine if any provision of this section or any rule or  
17 regulation adopted by the secretary has been violated or to secure evidence  
18 of any such violation.

19 (i) In addition to or in lieu of any other civil or criminal penalty  
20 provided by law, the director, upon a finding that a retailer or third-party  
21 delivery service has violated any provision of this section, may impose a  
22 civil fine not exceeding \$500 for each violation. The director may enforce  
23 the requirements of this section against a retailer or a third-party delivery  
24 service for any violations committed by an employee of such retailer or  
25 third-party delivery service or by an independent contractor contracting  
26 with such retailer or third-party delivery service. The director may impose  
27 a civil fine on a retailer, an independent contractor or a third-party delivery  
28 service for the same violation. Nothing in this section shall be construed to  
29 limit the jurisdictional authority of the director in pursuing violations of  
30 this section against any agent of a retailer or third-party delivery service.

31 (j) A retailer aggrieved by an independent contractor or a third-party  
32 delivery service that violates the provisions of this section may bring an  
33 action to enjoin such violation and may seek damages resulting from such  
34 violation, including all profits derived from such violation. A retailer may  
35 seek punitive damages in an amount not to exceed three times the amount  
36 of profits and damages if the defendant knowingly committed the violation  
37 or the violation was committed in bad faith. The prevailing party in any  
38 such action may recover reasonable attorney fees and court costs.

39 (k) A retailer or any person affiliated with a retailer may contract with  
40 another retailer as a third-party delivery service to conduct deliveries and  
41 other delivery-related services on behalf of such other retailer in  
42 accordance with the provisions of this section. Such retailer or other  
43 affiliated person shall hold a valid delivery permit prior to entering into

1 any such contractual agreement with such other retailer.

2 (l) The secretary shall adopt rules and regulations necessary to  
3 implement and enforce the provisions of this section.

4 (m) The provisions of this section shall be a part of and supplemental  
5 to the Kansas liquor control act.

6 New Sec. 3. (a) In addition to the rights of a retailer under the Kansas  
7 cereal malt beverage act, a retailer license shall allow the retailer to deliver  
8 cereal malt beverage and beer containing not more than 6% alcohol by  
9 volume in the original unopened container that is sold by such retailer to a  
10 patron at an address designated by such patron for consumption off the  
11 licensed premises and not for resale.

12 (b) Prior to any cereal malt beverage and beer containing not more  
13 than 6% alcohol by volume being removed from a retailer's licensed  
14 premises for delivery under this section, such retailer shall finalize all  
15 payments for such cereal malt beverage and beer containing not more than  
16 6% alcohol by volume made by the purchasing patron or obtain a debit or  
17 credit card authorization for the total amount charged for such cereal malt  
18 beverage and beer containing not more than 6% alcohol by volume. All  
19 cereal malt beverage and beer containing not more than 6% alcohol by  
20 volume shall be assembled, packaged and fulfilled for delivery at such  
21 retailer's licensed premises and from the retailer's inventory located at such  
22 premises.

23 (c) (1) A retailer may authorize deliveries on such retailer's behalf  
24 through a contractual agreement with an independent contractor or third-  
25 party delivery service. A third-party delivery service shall hold a valid  
26 delivery permit prior to entering into any such contractual agreement with  
27 a retailer.

28 (2) An independent contractor or third-party delivery service may  
29 offer to conduct deliveries on behalf of a retailer pursuant to this section if:

30 (A) The retailer expressly agrees in writing to allow the independent  
31 contractor or third-party delivery service to offer the delivery of orders on  
32 behalf of such retailer; and

33 (B) such agreement does not include any provision that requires a  
34 retailer to indemnify the independent contractor or third-party delivery  
35 service for any damages or harm caused by the independent contractor or  
36 third-party delivery service.

37 (3) Any provision in an agreement between an independent contractor  
38 or third-party delivery service and a retailer that is contrary to this  
39 subsection is void and unenforceable.

40 (4) No employee of a retailer or third-party delivery service and no  
41 independent contractor contracting with a retailer or third-party delivery  
42 service shall be required to obtain a delivery permit in order to conduct  
43 deliveries for such retailer or third-party delivery service.

1 (d) (1) A retailer may authorize a third-party delivery service to  
2 conduct other delivery-related services. A third-party delivery service that  
3 has contracted with a retailer for such services may use electronic means,  
4 including, but not limited to, websites and mobile device applications, to  
5 market, receive and process orders placed by patrons for cereal malt  
6 beverage and beer containing not more than 6% alcohol by volume if:

7 (A) The retailer retains sole discretion to determine whether to accept  
8 an order and to complete a sale transaction;

9 (B) the sale transaction is between the patron placing the order and  
10 the retailer that accepts such order, and the retailer appears as the merchant  
11 of record at all times, including at the time of purchase and acceptance of  
12 the delivery; and

13 (C) the retailer receives full payment from the patron placing the  
14 order for all cereal malt beverage and beer containing not more than 6%  
15 alcohol by volume included in such order, and all moneys collected from  
16 such patron are automatically paid or otherwise credited to such retailer.

17 (2) A third-party delivery service conducting deliveries or other  
18 delivery-related services on behalf of a retailer shall not:

19 (A) Use a retailer's likeness to falsely suggest sponsorship or  
20 endorsement of such third-party delivery service by such retailer;

21 (B) inflate or alter a retailer's pricing, but may assess other charges to  
22 the patron if such charges are separately itemized on the receipt provided  
23 to the patron; or

24 (C) charge the retailer any fee, commission or other expense unless  
25 such fee, commission or other expense is clearly identified in a written  
26 agreement executed by both parties.

27 (3) A third-party delivery service shall remove a retailer from such  
28 third-party delivery service's delivery and delivery-related services within  
29 10 days after receiving a request for such removal from such retailer.

30 (e) (1) All cereal malt beverage and beer containing not more than  
31 6% alcohol by volume that is removed from a retailer's licensed premises  
32 for delivery pursuant to this section shall remain in the possession of such  
33 retailer or the third-party delivery service conducting the delivery on  
34 behalf of such retailer, the employee of such retailer or third-party delivery  
35 service or an independent contractor contracting with such retailer or third-  
36 party delivery service to conduct such deliveries. Such cereal malt  
37 beverage and beer containing not more than 6% alcohol by volume shall  
38 not be transferred to any other person until delivered to the address  
39 designated by the patron, or if delivery cannot be completed, returned to  
40 the licensed premises of the retailer.

41 (2) Cereal malt beverage and beer containing not more than 6%  
42 alcohol by volume shall only be delivered by an individual who:

43 (A) Is at least 21 years of age;

1 (B) holds a valid driver's license;

2 (C) is covered as the driver of a vehicle by primary automobile  
3 insurance that meets the minimum coverage requirements in K.S.A. 40-  
4 284 and 40-3107, and amendments thereto; and

5 (D) completes a training and certification program for individuals  
6 delivering cereal malt beverage and beer containing not more than 6%  
7 alcohol by volume pursuant to this section that is reviewed and approved  
8 by the director and includes, but is not limited to, identifying individuals  
9 who are less than 21 years of age or intoxicated and recognizing false or  
10 altered forms of identification.

11 (f)(1) All cereal malt beverage and beer containing not more than 6%  
12 alcohol by volume delivered pursuant to this section shall only be  
13 delivered to an individual who is at least 21 years of age and who presents  
14 valid government-issued photographic identification authenticating the age  
15 of such individual. The identity and age of the individual accepting  
16 delivery of any cereal malt beverage and beer containing not more than  
17 6% alcohol by volume shall be authenticated, and such individual shall  
18 execute a written or electronic acknowledgment of receipt of such cereal  
19 malt beverage and beer containing not more than 6% alcohol by volume  
20 and certification of such individual's age. A delivery shall be deemed  
21 completed upon proper acceptance of the cereal malt beverage and beer  
22 containing not more than 6% alcohol by volume. All completed deliveries  
23 shall be final.

24 (2) No delivery of cereal malt beverage and beer containing not more  
25 than 6% alcohol by volume shall be completed if:

26 (A) There is no individual physically present at the address  
27 designated by the patron placing the order who is available to accept  
28 delivery;

29 (B) the individual attempting to accept delivery is:

30 (i) Less than 21 years of age;

31 (ii) unable to provide valid government-issued photographic  
32 identification; or

33 (iii) noticeably intoxicated; or

34 (C) the address designated by the patron placing the order is:

35 (i) Part of any locker, mailbox, package shipping location or similar  
36 service or storage facility business;

37 (ii) any place of worship;

38 (iii) any daycare;

39 (iv) any elementary or secondary school;

40 (v) any public or private postsecondary educational institution; or

41 (vi) any place of business that is licensed under the Kansas liquor  
42 control act to manufacture, distribute or sell alcoholic liquor, except that  
43 such deliveries may be made to a guest of a hotel or other place of public

1 accommodation for personal consumption and not for resale.

2 (3) Deliveries of cereal malt beverage and beer containing not more  
3 than 6% alcohol by volume shall only be made:

4 (A) On the same calendar day that such cereal malt beverage and beer  
5 containing not more than 6% alcohol by volume is removed from the  
6 retailer's license premises for delivery;

7 (B) during those times when it is lawful for the retailer to sell cereal  
8 malt beverage and beer containing not more than 6% alcohol by volume  
9 for consumption off the licensed premises; and

10 (C) to an address that is located within a 50-mile radius from the  
11 licensed premises of the retailer that sold such cereal malt beverage and  
12 beer containing not more than 6% alcohol by volume.

13 (g) Each retailer delivering cereal malt beverage and beer containing  
14 not more than 6% alcohol by volume pursuant to this section and each  
15 third-party delivery service shall submit to the director an outline of a  
16 training and certification program for individuals delivering cereal malt  
17 beverage and beer containing not more than 6% alcohol by volume  
18 pursuant to this section that includes, but is not limited to, identifying  
19 individuals who are less than 21 years of age or intoxicated and  
20 recognizing false or altered forms of identification. The director shall  
21 review and approve or deny all submitted program outlines. The director  
22 shall provide the specific reason for the denial of any program outline  
23 along with notice to the retailer or third-party delivery service that such  
24 program outline is denied.

25 (h) In addition to the powers and duties of the director provided in  
26 K.S.A. 41-201, and amendments thereto, the director and any employees  
27 or agents thereof shall have the authority to conduct an audit of any  
28 retailer's records to determine if any provision of this section or any rule or  
29 regulation adopted by the secretary has been violated or to secure evidence  
30 of any such violation.

31 (i) In addition to or in lieu of any other civil or criminal penalty  
32 provided by law, the director, upon a finding that a retailer or third-party  
33 delivery service has violated any provision of this section, may impose a  
34 civil fine not exceeding \$500 for each violation. The director may enforce  
35 the requirements of this section against a retailer or a third-party delivery  
36 service for any violations committed by an employee of such retailer or  
37 third-party delivery service or by an independent contractor contracting  
38 with such retailer or third-party delivery service. The director may impose  
39 a civil fine on a retailer, an independent contractor or a third-party delivery  
40 service for the same violation. Nothing in this section shall be construed to  
41 limit the jurisdictional authority of the director in pursuing violations of  
42 this section against any agent of a retailer or third-party delivery service.

43 (j) A retailer aggrieved by an independent contractor or a third-party

1 delivery service that violates the provisions of this section may bring an  
2 action to enjoin such violation and may seek damages resulting from such  
3 violation, including all profits derived from such violation. A retailer may  
4 seek punitive damages in an amount not to exceed three times the amount  
5 of profits and damages if the defendant knowingly committed the violation  
6 or the violation was committed in bad faith. The prevailing party in any  
7 such action may recover reasonable attorney fees and court costs.

8 (k) A retailer or any person affiliated with a retailer may contract with  
9 another retailer as a third-party delivery service to conduct deliveries and  
10 other delivery-related services on behalf of such other retailer in  
11 accordance with the provisions of this section. Such retailer or other  
12 affiliated person shall hold a valid delivery permit prior to entering into  
13 any such contractual agreement with such other retailer.

14 (l) The secretary shall adopt rules and regulations necessary to  
15 implement and enforce the provisions of this section.

16 (m) The provisions of this section shall be a part of and supplemental  
17 to the Kansas cereal malt beverage act.

18 Sec. 4. K.S.A. 41-102 is hereby amended to read as follows: 41-102.  
19 As used in this act, unless the context clearly requires otherwise:

20 (a) "Alcohol" means the product of distillation of any fermented  
21 liquid, whether rectified or diluted, whatever its origin, and includes  
22 synthetic ethyl alcohol but does not include denatured alcohol or wood  
23 alcohol.

24 (b) "Alcoholic candy" means:

25 (1) For purposes of manufacturing, any candy or other confectionery  
26 product with an alcohol content greater than 0.5% alcohol by volume; and

27 (2) for purposes of sale at retail, any candy or other confectionery  
28 product with an alcohol content greater than 1% alcohol by volume.

29 (c) "Alcoholic liquor" means alcohol, spirits, wine, beer, alcoholic  
30 candy and every liquid or solid, patented or not, containing alcohol, spirits,  
31 wine or beer and capable of being consumed by a human being, but shall  
32 not include any cereal malt beverage.

33 (d) "Beer" means a beverage, containing more than 3.2% alcohol by  
34 weight, obtained by alcoholic fermentation of an infusion or concoction of  
35 barley, or other grain, malt and hops in water and includes beer, ale, stout,  
36 lager beer, porter and similar beverages having such alcoholic content.

37 (e) "Caterer" means the same as defined by K.S.A. 41-2601, and  
38 amendments thereto.

39 (f) "Cereal malt beverage" means the same as defined by K.S.A. 41-  
40 2701, and amendments thereto.

41 (g) "Club" means the same as defined by K.S.A. 41-2601, and  
42 amendments thereto.

43 (h) "Director" means the director of alcoholic beverage control of the

1 department of revenue.

2 (i) "Distributor" means the person importing or causing to be  
3 imported into the state, or purchasing or causing to be purchased within  
4 the state, alcoholic liquor for sale or resale to retailers licensed under this  
5 act or cereal malt beverage for sale or resale to retailers licensed under  
6 K.S.A. 41-2702, and amendments thereto.

7 (j) "Domestic beer" means beer which contains not more than 15%  
8 alcohol by weight and which is manufactured in this state.

9 (k) "Domestic fortified wine" means wine which contains more than  
10 14%, but not more than 20% alcohol by volume and which is  
11 manufactured in this state.

12 (l) "Domestic table wine" means wine which contains not more than  
13 14% alcohol by volume and which is manufactured without rectification or  
14 fortification in this state.

15 (m) "Drinking establishment" means the same as defined by K.S.A.  
16 41-2601, and amendments thereto.

17 (n) "Farm winery" means a winery licensed by the director to  
18 manufacture, store and sell domestic table wine and domestic fortified  
19 wine.

20 (o) "Fulfillment house" means any location or facility for any in-state  
21 or out-of-state entity that handles logistics, including warehousing,  
22 packaging, order fulfillment or shipping services on behalf of the holder of  
23 a special order shipping license issued pursuant to K.S.A. 41-350, and  
24 amendments thereto.

25 (p) "Hard cider" means any alcoholic beverage that:

26 (1) Contains less than 8.5% alcohol by volume;

27 (2) has a carbonation level that does not exceed 6.4 grams per liter;  
28 and

29 (3) is obtained by the normal alcoholic fermentation of the juice of  
30 sound, ripe apples or pears, including such beverages containing sugar  
31 added for the purpose of correcting natural deficiencies.

32 (q) "Manufacture" means to distill, rectify, ferment, brew, make, mix,  
33 concoct, process, blend, bottle or fill an original package with any  
34 alcoholic liquor, beer or cereal malt beverage.

35 (r) (1) "Manufacturer" means every brewer, fermenter, distiller,  
36 rectifier, wine maker, blender, processor, bottler or person who fills or  
37 refills an original package and others engaged in brewing, fermenting,  
38 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt  
39 beverage.

40 (2) "Manufacturer" does not include a microbrewery, microdistillery  
41 or a farm winery.

42 (s) "Microbrewery" means a brewery licensed by the director to  
43 manufacture, store and sell domestic beer and hard cider.

1 (t) "Microdistillery" means a facility which produces spirits from any  
2 source or substance that is licensed by the director to manufacture, store  
3 and sell spirits.

4 (u) "Minor" means any person under 21 years of age.

5 (v) "Nonbeverage user" means any manufacturer of any of the  
6 products set forth and described in K.S.A. 41-501, and amendments  
7 thereto, when the products contain alcohol or wine, and all laboratories  
8 using alcohol for nonbeverage purposes.

9 (w) "Original package" means any bottle, flask, jug, can, cask, barrel,  
10 keg, hogshead or other receptacle or container whatsoever, used, corked or  
11 capped, sealed and labeled by the manufacturer of alcoholic liquor, to  
12 contain and to convey any alcoholic liquor. Original container does not  
13 include a sleeve.

14 (x) "Person" means any natural person, corporation, partnership, trust  
15 or association.

16 (y) "Powdered alcohol" means alcohol that is prepared in a powdered  
17 or crystal form for either direct use or for reconstitution in a nonalcoholic  
18 liquid.

19 (z) "Primary American source of supply" means the manufacturer, the  
20 owner of alcoholic liquor at the time it becomes a marketable product or  
21 the manufacturer's or owner's exclusive agent who, if the alcoholic liquor  
22 cannot be secured directly from such manufacturer or owner by American  
23 wholesalers, is the source closest to such manufacturer or owner in the  
24 channel of commerce from which the product can be secured by American  
25 wholesalers.

26 (aa) (1) "Retailer" means a person who is licensed under the Kansas  
27 liquor control act and sells at retail, or offers for sale at retail, alcoholic  
28 liquors or cereal malt beverages.

29 (2) "Retailer" does not include a microbrewery, microdistillery or a  
30 farm winery.

31 (bb) "Sale" means any transfer, exchange or barter in any manner or  
32 by any means whatsoever for a consideration and includes all sales made  
33 by any person, whether principal, proprietor, agent, servant or employee.

34 (cc) "Salesperson" means any natural person who:

35 (1) Procures or seeks to procure an order, bargain, contract or  
36 agreement for the sale of alcoholic liquor or cereal malt beverage; or

37 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt  
38 beverage, or in promoting the business of any person, firm or corporation  
39 engaged in the manufacturing and selling of alcoholic liquor or cereal malt  
40 beverage, whether the seller resides within the state of Kansas and sells to  
41 licensed buyers within the state of Kansas, or whether the seller resides  
42 without the state of Kansas and sells to licensed buyers within the state of  
43 Kansas.

1 (dd) "Sample" means a serving of alcoholic liquor that contains not  
2 more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or  
3 (3) two ounces of beer or cereal malt beverage. A "sample" of a mixed  
4 alcoholic beverage shall contain not more than ½ ounce of distilled spirits.

5 (ee) "Secretary" means the secretary of revenue.

6 (ff) (1) "Sell at retail" and "sale at retail" refer to and mean sales for  
7 use or consumption and not for resale in any form and sales to clubs,  
8 licensed drinking establishments, licensed caterers or holders of temporary  
9 permits.

10 (2) "Sell at retail" and "sale at retail" do not refer to or mean sales by  
11 a distributor, a microbrewery, a farm winery, a licensed club, a licensed  
12 drinking establishment, a licensed caterer or a holder of a temporary  
13 permit.

14 (gg) "To sell" includes to solicit or receive an order for, to keep or  
15 expose for sale and to keep with intent to sell.

16 (hh) "Sleeve" means a package of two or more 50-milliliter or 3.2-  
17 fluid-ounce containers of spirits.

18 (ii) "Spirits" means any beverage—~~which~~ *that* contains alcohol  
19 obtained by distillation, mixed with water or other substance in solution,  
20 and includes brandy, rum, whiskey, gin or other spirituous liquors, and  
21 such liquors when rectified, blended or otherwise mixed with alcohol or  
22 other substances.

23 (jj) "Supplier" means a manufacturer of alcoholic liquor or cereal  
24 malt beverage or an agent of such manufacturer, other than a salesperson.

25 (kk) "Temporary permit" means the same as defined by K.S.A. 41-  
26 2601, and amendments thereto.

27 (ll) *"Third-party delivery service" means any person, including any*  
28 *limited liability company or other legally recognized entity that:*

29 (1) *Is registered to do business in this state;*

30 (2) *does not hold any license issued under the Kansas liquor control*  
31 *act or Kansas cereal malt beverage act, except a retailer's license;*

32 (3) *is not affiliated with any licensed manufacturer; and*

33 (4) *holds a delivery permit issued pursuant to section 1, and*  
34 *amendments thereto.*

35 (mm) "Wine" means any alcoholic beverage obtained by the normal  
36 alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or  
37 other agricultural products, including such beverages containing added  
38 alcohol or spirits or containing sugar added for the purpose of correcting  
39 natural deficiencies. "Wine" includes hard cider and any other product that  
40 is commonly known as a subset of wine.

41 Sec. 5. K.S.A. 41-2701 is hereby amended to read as follows: 41-  
42 2701. As used in this act unless the context otherwise requires:

43 (a) "Cereal malt beverage" means any fermented but undistilled

1 liquor brewed or made from malt or from a mixture of malt or malt  
 2 substitute or any flavored malt beverage, as defined in K.S.A. 41-2729,  
 3 and amendments thereto, but does not include any such liquor which is  
 4 more than 3.2% alcohol by weight.

5 (b) "Director" means the director of alcoholic beverage control of the  
 6 department of revenue.

7 (c) "Manufacturer" means a manufacturer as defined by K.S.A. 41-  
 8 102, and amendments thereto.

9 (d) "Person" means any individual, firm, partnership, corporation or  
 10 association.

11 (e) "Retailer" means any person who is licensed under the Kansas  
 12 cereal malt beverage act and who sells or offers for sale any cereal malt  
 13 beverage or beer containing not more than 6% alcohol by volume for use  
 14 or consumption and not for resale in any form.

15 (f) "Place of business" means any place at which cereal malt  
 16 beverages or beer containing not more than 6% alcohol by volume are  
 17 sold.

18 (g) "Distributor" means a beer distributor licensed pursuant to the  
 19 Kansas liquor control act.

20 (h) "Legal age for consumption of cereal malt beverage" means 21  
 21 years of age, except that "legal age for consumption of cereal malt  
 22 beverage" shall mean 18 years of age if at any time the provisions of P.L.  
 23 98-363 penalizing states for permitting persons under 21 years of age to  
 24 consume cereal malt beverage are repealed or otherwise invalidated or  
 25 nullified.

26 (i) *"Third-party delivery service" means the same as defined in K.S.A.*  
 27 *41-102, and amendments thereto.*

28 Sec. 6. K.S.A. 41-2728 is hereby amended to read as follows: 41-  
 29 2728. ~~From and after November 15, 2005:~~

30 (a) K.S.A. 41-2701 through 41-2727 and section—14 3, and  
 31 amendments thereto, shall be known and may be cited as the Kansas cereal  
 32 malt beverage act.

33 (b) Except as specifically provided in the Kansas cereal malt  
 34 beverage act, the power to regulate all phases of the manufacture,  
 35 distribution, sale, possession, transportation and traffic in cereal malt  
 36 beverages is vested exclusively in the state and shall be exercised as  
 37 provided in the Kansas cereal malt beverage act. No city or county shall  
 38 enact any ordinance or resolution—~~which~~ *that* is in conflict with the  
 39 provisions of the Kansas cereal malt beverage act and any such ordinance  
 40 or resolution shall be null and void.

41 (c) The provisions of this act are severable. If any provision of this  
 42 act is held to be invalid or unconstitutional, it shall be presumed  
 43 conclusively that the legislature would have enacted the remainder of this

1 act without such invalid or unconstitutional provision.

2 Sec. 7. K.S.A. 41-102, 41-2701 and 41-2728 are hereby repealed.

3 Sec. 8. This act shall take effect and be in force from and after its

4 publication in the statute book.